S. S. REPORTS.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C.J.

August 6, 1940.

TAN SWEE BIOU v. GOH SWEE LENG.

[SINGAPORE CONSOLIDATED SUITS Nos. 132 of 1937 and 174 of 1938]

Rules of the Supreme Court—O. 62 r. 13—Sum recovered not exceeding $500/-.

High Court costs can be allowed even where the sum recovered does not exceed $500.00. In a case where there were claims and counterclaims for declarations and for money and where the issues could not have been determined by the District Court High Court costs were properly allowed.

Case referred to:—

(1) *Coles & Ravenshear, In re,* 1907 1 K.B. para 1 at p. 5.

SUMMONS IN CHAMBERS.

P. H. Battishil for applicant (defendant).

A. de Mello for respondent (plaintiff).

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, Ag. C.J.—This was an application to review a taxation by the Registrar on the ground that only $500.00 having been recovered on the claim in Suit 132 of 1937, any costs recovered should have been on the District Court scale.

The appeal to the Supreme Court was *prima facie* out of time and the summons asked for an extension of time for appealing.

As regards time, the matter is covered by Order 62 rules 71, 72 and 73. Under rule 71 a party who is dissatisfied with a taxation may carry in objections within two days after receiving of signing of the allocatur. This procedure was correctly followed, the Registrar considered the objections and in a written judgment confirmed his certificate on the 4th July, 1940. Then under rule 73 there is a right of appeal to the Judge within 14 days after the date of the certificate or allocatur. This rule does not say that the 14 days run from the date when notice of the allocatur has been given. It appears from the affidavits filed that the defendants' solicitors were not aware of the Registrar's certificate until the 18th July and did not take the necessary steps until some days later. They were therefore out of time. Under the rules it is clear that it was the duty of the solicitors to discover when the allocatur was signed, and slackness on the part of a solicitor's clerk in obtaining the necessary information has never been held to provide an adequate reason for an extension of time for appealing (see *In re Cole & Ravenshear*(1)).

In my opinion, therefore, the appeal was out of time and leave to extend the time should be refused.

As, however, I have heard the application upon the merits, and certain points of interest have arisen, I will deal also with the substance of the application.

The rule which is relevant is Order 62 rule 13 which reads as follows:—

> "If any action is brought in the High Court, without special leave under section 53 of the Courts Ordinance (Cap. 10), which would have been within the jurisdiction of a District Court, or in which the plaintiff recovers by judgment a sum not exceeding five hundred dollars, the plaintiff shall not be entitled to any more costs than he would have been entitled to if the proceedings had been brought in a District Court, unless in any such action a Judge certifies that there was sufficient reason for bringing the action in the High Court."

It will be necessary to give short details of the claim which were adjudicated upon. In suit 132 of 1937 the plaintiff claimed under para. 5 $1,000.00 and under para. 6 (a) $500.00, and under para. 6 (b) and (c) two declarations. In the same suit the defendant counterclaimed for various declarations, and a sum of nearly $3,000.00 for repairs alleged to have been carried out on the plaintiff's implied authority. In Suit 174 of 1938 the plaintiff claimed a sum of nearly $5,000.00. The subject matter of both suits was a lease of a pine-apple canning factory in Johore made by the plaintiff in favour of the defendant.

By the order of Pedlow, J. made on the 29th August, 1938, it was ordered by consent that the two suits be consolidated and tried thenceforth as one action. It is abundantly clear that the matters in issue could never have been determined by the District Court.

The effect of the judgment of Manning, J., which is dated the 6th December, 1939, is as follows: The plaintiff recovered $500.00 on his claim under para. 6 (a) and a declaration that he was entitled to $700.00 for rent, such sum to be deducted from the $2,000.00 deposited by the defendant with the plaintiff and which was repayable to the defendant. There was also a declaration that the rent was $100.00 per month and not $500.00 per month. These declarations were in accordance with the defendants counterclaim and not

in accordance with the plaintiff's claim. The plaintiff also recovered the sum of $561.30 in respect of his claim in Suit 174/38. The costs were dealt with as follows:—On the claim in Suit 132/37 the plaintiff recovered half of his costs and all the costs of the counterclaim, and in Suit 174/38 half his costs, such costs to be taxed in each case.

I feel quite satisfied that the learned Judge intended all the costs to be taxed on the High Court scale, and I can see nothing in Order 62 rule 13 to prevent effect from being given to such intention. The opening words of the rule indicate that it is applicable when the plaintiff has initiated proceedings in the High Court when he could have brought them as easily and cheaply in the District Court. The plaintiff could not have asked for the declaration prayed for in the statement of claim under the District Court procedure and if he had not asked for such declaration in the claim the defendant could not have counterclaimed for the declarations which were subsequently made without having the case transferred to the High Court. Then by consent the actions were consolidated and carried on as one action, and such consolidated action could never have been determined in the District Court. It was certainly never the intention of the Rules that parties should be forced to bring part of their claim in the District Court and the remainder in the High Court. In my opinion, therefore the action was properly brought and continued in the High Court and the costs of the whole action were at the trial Judge's discretion and no certificate under Order 62 rule 13 was called for. The fact that the formal order dealt with the costs in several compartments was merely a matter of convenience, and the learned Judge must be deemed to have dealt with the costs as a whole and as costs of an action properly brought in the High Court.

On the merits also, therefore, there is no substance in the application which must be dismissed with costs.

Application dismissed.

[APPELLATE CRIMINAL JURISDICTION]
TERRELL, J.A.
May 6, 1940.

REX v. V. J. DASSAN.

[SINGAPORE MAGISTRATE'S APPEAL No. 28 of 1940]

Criminal Procedure Code, S. 182 (g)—Penal Code S. 420—Hearing and recording of evidence—Complainant and his witnesses—Examination of—Procedure—Practice.

Section 182 (g) of the Criminal Procedure Code does not excuse the Magistrate from hearing the evidence of all witnesses for the prosecution. In all criminal cases the complainant and such witnesses as he may produce must be examined, and the case must be decided on the effect of their evidence.

A Magistrate can avail himself of his powers under S. 182 (g) of the Criminal Procedure Code in the following cases:—

(a) where all the facts which the prosecution have set out to prove would not constitute a criminal offence even if they were accepted, or

(b) where an essential link in the prosecution case is provided by one or more witnessess whom the Magistrate has heard and whose evidence he is not prepared to accept.

Case referred to:—

(1) *Public Prosecutor v. Perianan Chetty,* 4 F.M.S.L.R. p. 30 distinguished and not followed.

MAGISTRATE'S APPEAL.

C. H. Butterfield (Crown Counsel) for the Crown.

Respondent in person.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, J.A.—The charge was one of cheating (section 420 of the Penal Code). The learned Magistrate after hearing the complainant acquitted the accused without giving the Prosecution the opportunity of calling their other witnesses in support of the charge.

The learned Magistrate purported to act under section 182 (g) of the Criminal Procedure Code which reads as follows:—

> "Nothing in paragraph (f) shall be deemed to prevent the Court from acquitting the accused at any previous stage of the case if, for reasons to be recorded by the Court, it considers the charge to be groundless;"

and the Crown has appealed against the acquittal, citing in support of their argument the case of *P. P. v. Perianan Chetty*[1], which was decided under a similar provision in the F.M.S. Criminal Procedure Code. The Court of Appeal (Woodward, C.J.C. and Reay, J.C.) ruled that if the prosecuting counsel asks the Court to hear a witness the Court cannot refuse to hear him, but must take all the evidence that the prosecution desires to be heard. The Court, however, dismissed the appeal on the ground that the prosecution had acquiesced in the procedure adopted. The *dictum* of the Court therefore was *obiter,* and, as it is contrary to the express provisions of section 182 (g) of the Criminal Procedure Code, I do not feel bound to follow it.

It appears to me that some effect must be given to this subsection, and I take it that a Magistrate can